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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/790,313	03/01/2004	Sadayuki Shoudai	891050.401	9340

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SEED INTELLECTUAL PROPERTY LAW GROUP PLLC
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EXAMINER

FALASCO, LOUIS V

ART UNIT	PAPER NUMBER
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1773

MAIL DATE	DELIVERY MODE
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04/17/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action Before the Filing of an Appeal Brief	Application No. 10/790,313	Applicant(s) SHOUDAI ET AL.	
	Examiner Louis Falasco	Art Unit 1773	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 21 March 2007 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 4 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
- (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ They raise the issue of new matter (see NOTE below);
- (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☒ Applicant's reply has overcome the following rejection(s): all prior art and double patenting rejects of claims 26 and 36.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
- The status of the claim(s) is (or will be) as follows:
- Claim(s) allowed: _____.
- Claim(s) objected to: 26 and 36.
- Claim(s) rejected: 1, 22, 23, 27, 29-35 and 37-42.
- Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☒ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☐ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: _____.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____
13. ☐ Other: _____.

1. Applicant's arguments filed 3/21/07, under 37 CFR 1.116 have been fully considered but they are not persuasive in overcoming all the rejections made the Final Rejection.

Allowed subject matter in claims

2. Applicants have argued the prior art does not disclose 'breaking' the tape, and have submitted details of evidence of unobviousness previously present in the specification. This evidence has now been illustrated graphically and more completely explained. Upon reconsideration, has been convincing for the 50% to 60% cut surface – commensurate with what has been claimed in claims 26(1) and 36(35).

3. Applicants have shown an unobvious improvement, in the occurrences of protrusions on the tape lower blade side without magnetic layer cracking on the tape upper blade side, within the 50% to 60% range of claims 26 and 36. This improvement was (1) not obvious from the prior art and (2) not obvious from what has been claimed in allowed application SN 10/802,134. The rejections over prior art and double patenting rejections have been withdrawn for claims 26 and 36. Claims 26 and 36 are now objected to as being dependent upon a rejected base claims, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to arguments

4. Applicants have argued the prior art has no express disclosure of a broken region. It has been pointed out that the prior art *sheared* portions are smooth where as broken portions are have irregularly raised and depressed patterns. However, (1) these are unclaimed limitations and can be given little weight and (2) it is believed a reasonable case of obviousness for the tape product in the remaining rejected claims has been put forth by the examiner.

5. The prior art *sheared* or *split* portions of the tape would be expected to be only slightly different from what has been claimed. *Shearing* tangentially stresses the tape perpendicular to the tape face dividing the tape through its thickness. This would reasonably be expected to have very similar patterns to fracturing the tape by *breaking*.

Summary

6. A prima facie case of obviousness has been established; applicants have proffered evidence of unobviousness commensurate in scope with what has been claimed in claims 26 and 36.

Conclusion

The claims are: 1, 22, 23, 26, 27 and 29-42.

- Claims 1, 22, 23, 27, 29-35 and 37-42 remain rejected for all reasons of record.
- Claims 26 and 36 have been objected to, as containing allowable subject matter, but being dependant on rejected claims.

INQUIRES

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Louis Falasco, PhD whose telephone number is (571)272-1507. The examiner can normally be reached on M-F 10:30 - 7:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Carol D. Chaney, PhD can be reached at (571)272-1284. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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CAROL CHANEY
SUPERVISORY PATENT EXAMINER